IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1146 OF 2004

Indira R.Naik & others. ... Appellants.
Versus.
Municipal Corporation of Greater
Mumbai and others, ... Respondents.

Shri Anil Singh with Shri D.R.Shah for the
Appellants.

Shri J.Xavier for the Respondent No.1.

Shri A.Y.Sakhare fror the Respondents Nos.10 & 11.

CORAM : ABHAY S. OKA, J.

DATED : 25th January, 2005.

P.C.:

1. Shri Singh the leaned Counsel appearing for the Appellants states that in the suit filed by the Appellants there is a technical defect inasmuch as the Appellants have not prayed for possession of the suit property. He, therefore, prays that he may be permitted to withdraw L.C.Suit No.5611 of 2004 with liberty to file a fresh suit on the same cause of action.

2. I have heard the learned Counsel appearing for the Respondent No.1 and the learned Counsel appearing for the Respondents Nos.10 and 11. It is not in dispute that in so far as the Respondents Nos.2 to 9 are concerned, their right, title and interest in the property in dispute has been acquired by a registered sale deed by the Respondents Nos.10 and 11. The learned Counsel for the Appellants states that private notices have been sent to the Respondents Nos.2 to 9 and he has

filed an affidavit to that effect which is taken on record and marked "X". The learned Counsel appearing for the Respondent No.1 has opposed the said prayer made by the learned Counsel for the Appellants. However, the learned Counsel for the Respondents Nos.10 and 11 has no objection for the said prayer being granted. Considering the facts and circumstances of the case, the prayer made by the Appellants deserves to be granted.

3. Hence the following order is passed:

(i) L.C.Suit No.5611 of 2004 is allowed to be withdrawn with liberty to file a fresh suit on the same cause of action.

(ii) As a consequence of withdrawal of the suit, the Appeal does not survive and the same is dismissed as infructuous. There will be no order as to costs.

(iii) It is obvious that as and when fresh suit is filed by the Appellants, the said suit and the application for interim relief made therein will be decided on its own merits.

(iv) The parties to act on an authenticated copy of this order.

Judge.